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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,923	07/10/2001	Paul S. Enfield	P113836	9260

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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,923

Applicant(s)

ENFIELD, PAUL S.

Examiner

Joseph A. Fischetti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-8 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) 6-8,10-12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,13,14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims withdrawn are 6-8,10,11,12,15; claims cancelled are 2-4,9.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, 13, 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, applicant refers to a product by "brand name" but this is a nebulous term which requires defining given that brand name is driven by customer recognition which will vary from consumer to consumer.

35 U.S.C. 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ramey.

Ramey discloses a system to facilitate consumer shopping in a store related product categories with the products in each primary location related category being in a related primary location area of the shopping area (areas 16-24); products in each primary location related category which are in turn classified in a plurality of secondary location related categories (see, fig 4 secondary location for particular moldings), with the

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products in each secondary location related category being in a related secondary location area (see, id); products in at least some of said secondary location related categories being in subcategories of a related one of the secondary location related categories (corner moldings are subcategory of solid oak molding); said shopping area having a plurality of consumer access regions (aisles) between the which are proximate to the products in the shopping area and through which customers are able to pass in making product selections from adjacent products which are adjacent to that access region, each of said access regions being characterized in that the adjacent products are classified in one or more of said secondary categories and/or subcategories (see Fig. 5 aisles are adjacent the rack on which adjacent products e.g. moldings which as set forth above is a secondary category) ;

a. a plurality of display signs, each of which is located at a related access region for viewing by customers at or proximate to that related access region (signs C are located at the aisle entrance), each of said display signs having at least one graphic product representation of a product which is one of said adjacent products and is representative of products in its related secondary location related product category or subcategory at its related access region (see detailed view of sign C shown in Fig 4 which has a graphic of the particular molding of the secondary locations products); b. said display signs being positioned in a substantial shopping area portion of the shopping area and located at a substantial number of access regions in said substantial area portion (location of sign C in Fig. 5 at the head of aisle is reads as "in a substantial shopping area"), such that a customer passing through the access regions in said store shopping

area portion is able to associate said graphic product representations as representative of products in a subcategory and/or a secondary location related product category of the product or products of the graphic product representations, and thus identify primary, secondary and/or subcategory location in the shopping area portions as a guide to seeking products in the substantial shopping area portion where the graphic product representations are present (sign C results in a guide to the customer of products in the identify primary, secondary and/or subcategory products).

The newly added language of primary locations having a substantial portion of products categories being brands names with attendant packaging is deemed to be met by Ramey by whatever the items and or associated packaging and/or trade dress attendant to those items discloses in primary locations perimeter of sections 16-24 because one consumer's idea of what a brand name is not the another's, and without some sort of objective way of quantifying this alleged feature, Ramey is deemed to have met the claim. In other words, any item located in sections 16-24 of Ramey are deemed to be brand names given that this is term that is subjective and its meaning can vary from one consumer to the other based upon plural factors.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramey in view of Begum et al.

Ramey discloses a system to facilitate consumer shopping in a store related product categories with the products in each primary location related category being in a related primary location area of the shopping area (perimeter of areas 16-24); products in each primary location related category which are in turn classified in a plurality of secondary location related categories (see, fig 4 secondary location for particular moldings), with the products in each secondary location related category being in a related secondary location area (see, id); products in at least some of said secondary location related categories being in subcategories of a related one of the secondary location related categories (corner moldings are subcategory of solid oak molding); said shopping area having a plurality of consumer access regions (aisles) between the which are proximate to the products in the shopping area and through which customers are able to pass in making product selections from adjacent products which are adjacent to that access region, each of said access regions being characterized in that the adjacent products are classified in one or more of said secondary categories and/or subcategories (see

Fig. 5 aisles are adjacent the rack on which adjacent products e.g. moldings which as set forth above is a secondary category) ;

a. a plurality of display signs, each of which is located at a related access region for viewing by customers at or proximate to that related access region (signs C are located at the aisle entrance), each of said display signs having at least one graphic product representation of a product which is one of said adjacent products and is representative of products in its related secondary location related product category or subcategory at its related access region (see detailed view of sign C shown in Fig 4 which has a graphic of the particular molding of the secondary locations products); b. said display signs being positioned in a substantial shopping area portion of the shopping area and located at a substantial number of access regions in said substantial area portion (location of sign C in Fig. 5 at the head of aisle is reads as "in a substantial shopping area"), such that a customer passing through the access regions in said store shopping area portion is able to associate said graphic product representations as representative of products in a subcategory and/or a secondary location related product category of the product or products of the graphic product representations, and thus identify primary, secondary and/or subcategory location in the shopping area portions as a guide to seeking products in the substantial shopping area portion where the graphic product representations are present (sign C results in a guide to the customer of products in the identify primary, secondary and/or subcategory products).

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However, Ramey the sign C does not depict items by brand names and/or package designs nor is there an application of the arrangement to a grocery/food store.

However, Begum et al. do disclose such a display in a grocery store wherein a product graphic is depicted in a sign by using its brand name i.e., ACME, and with its associated packaging - water pitcher with orange and leaf design packaging/logo. It would be obvious to modify the arrangement of Ramsey to use brand name and packing graphics as graphics because often consumer recognition will be greater with respect to the goodwill connected with the product than with the recognition associated with the generic product names. The newly added language of primary locations having a substantial portion of products categories being brands names with attendant packaging is deemed to be met by Ramey by whatever the items are presented in primary locations perimeter of sections 16-24 because one consumer's idea of what a brand name is not the another's, and without some sort of objective way of quantifying this alleged feature, Ramey is deemed to have met the claim.

RE claims 13/14: Begum et al. disclose graphic product representations displayed in addition to the text (see above).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramey in view of Begum et al. as applied to claims 1-5, 9, 14 above, and further in view of Myers. The aforesaid combination fails to discuss a store directory which is visible to customers in the shopping area. But Myers does disclose such a directory, and uses a store directory Fig 3 with a listing of products and the location of these products in the store. It would be obvious to modify the code system of Myers with the brand name and logo reference signage of Begum et al. such that said store directory lists identifying names of products, with each identifying name of the product also having a graphic product representation substantially displaying packaging of a brand name product which is within the scope of the product listed in the directory. The motivation would be a quick glance finder of products. Official Notice is however taken to the old use of a directory to locate items in a store/mall etc.

Applicant's arguments filed 5/27/05 have been fully considered but they are not persuasive. Applicant has present arguments as to why the rejection based on Ramey. The newly added language of primary locations having a substantial portion of products categories being brands names with attendant packaging is deemed to be met by Ramey by whatever the items are presented in primary locations perimeter of sections 16-24 because one consumer's idea of what a brand name is not the another's, and without some sort of objective way of quantifying this alleged feature, Ramey is deemed to have met the claim. Applicant's arguments and declarations (see, e.g., Enfield p.7) go on at length to state that it is the pre formed familiarity with the trademark/dress of a name brand which makes the present scheme work. However, the Examiner has two problems with this logic. First, this is not to say that some one who uses only Stop & Shop coffee has not created his/her own familiarity with that brand. For this person, the Stop & Shop brand coffee is a named brand. Second, Enfield p.7 states that brand name recognition is driven by advertising. The contra-positive of this is that when advertising stops, the so called "recognition" will start to diminish. It cannot be seen how a patent can issue based upon the critical feature, such as whether a product is a brand name when the determination of what a brand name is can only be accomplished by survey evidence to establish to establish the effects of advertising.

The declarations under 37 CFR 1.132 filed 5/27/05 are insufficient to overcome the rejection of claims as set forth in the last Office action because: 1. see above for

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"brand name" problem and (2) the study on which these declarations are based were not included and thus are unsupported by evidence.

THIS ACTION IS FINAL. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication should be directed to PRIMARY EXAMINER Joseph A. Fischetti at telephone number (703) 305-0731.

A handwritten signature in black ink, appearing to read "Joseph A. Fischetti", with a stylized flourish at the end.

**JOSEPH A. FISCHETTI
PRIMARY EXAMINER**